

SECOND REGULAR SESSION

SENATE BILL NO. 943

92ND GENERAL ASSEMBLY

INTRODUCED BY SENATORS GOODE AND GROSS.

Pre-filed December 12, 2003, and ordered printed.

TERRY L. SPIELER, Secretary.

3461S.01I

AN ACT

To repeal sections 194.400, 194.405, 194.406, 194.407, 194.408, 194.409, and 194.410, RSMo, and to enact in lieu thereof eight new sections relating to unmarked burial remains, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 194.400, 194.405, 194.406, 194.407, 194.408, 194.409, and 194.410, RSMo, are repealed and eight new sections enacted in lieu thereof, to be known as sections 194.400, 194.403, 194.405, 194.406, 194.407, 194.408, 194.409, and 194.410, to read as follows:

194.400. As used in sections 194.400 to 194.410 the following words and phrases mean:

(1) **"Burial site", any natural or prepared physical location, whether originally below, on, or above the surface of the earth, into which individual human remains were deposited; including but not limited to, caves, rock cairns or pyres, or other structures which may not fall within the ordinary definition of a gravesite;**

(2) **"Cemetery", land used for the interment of human remains, including each tract so marked, signed, or designated and used as a human burial site, either currently or in the past. The term also includes tracts of land which are not visibly marked, signed, or designated as a cemetery, but which are known to be such by written historic records, or where the decedents interred there have known, living lineal descendants or relatives. However, the term cemetery does not apply to burial sites which predate 1700 and which do not fall within any**

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

definition of cemetery contained in chapter 214, RSMo;

(3) "Committee", the unmarked human burial consultation committee;

[(2)] (4) "Cultural items", [shall include] includes:

(a) ["Associated funerary objects", objects that are reasonably believed to have been placed with individual human remains either at the time of death, or during the death rite or ceremony, or later, and all other items exclusively made for burial purposes including items made to contain human remains;

(b) "Unassociated funerary objects", objects that are reasonably believed to have been placed with individual human remains either at the time of death or during the death rite or ceremony, or later, which can be identified by a preponderance of the evidence as related to known human remains or an unmarked human burial site or can be identified as having been removed from a specific unmarked human burial site;] "Funerary objects", items that, as part of a death rite or ceremony, are reasonably believed to have been placed intentionally with or near individual human remains at the time of death, during burial, or later. Funerary objects also mean those items that were exclusively made for human burial purposes, or made to contain human remains, and that were placed at a human burial site. With respect to Native American burial sites, this term includes both "associated funerary objects" and "unassociated funerary objects", as those terms are defined in 25 U.S.C. section 3001. In the event of a disagreement, the determination of the Federal Native American Graves Protection and Repatriation Act Review Committee established pursuant to 25 U.S.C. section 3006 shall govern as to what is a funerary object;

(b) "Sacred objects", a term limited here in scope and application to objects of Native American origin. With respect to Native American burial sites, this term has the same meaning as it is given in 25 U.S.C. section 3001; and

(c) "Cultural Patrimony", a term limited here in scope and application to objects of Native American origin. With respect to objects found in or with Native American burial sites, this term has the same meaning as it is given in 25 U.S.C. section 3001.

"Associated cultural items" means all funerary objects found with or so near to specific human remains as to be associated archaeologically with those remains; and any sacred objects or objects of cultural patrimony found generally at a site, even though they may not be associated with any specific human remains, and even if no human remains are found at all;

[(3)] (5) "General archaeological investigation", refers to:

(a) Excavations performed by professional archaeologists usually consisting of a structured scientific undertaking comprised of three segments including field investigations, laboratory analysis, and preparation and submission of a report of investigation; and

(b) Identification of the presence of human remains in excavated materials considered to occur at the completion of the laboratory analysis segment of the studies as above;

(6) **"Native American", a term that means of or relating to a present, past, or prehistoric tribe, people, or culture, that is or was once indigenous to the United States. As to present day tribes, it generally refers to those tribes and nations, the existence and sovereignty of which is recognized by the United States government;**

[(4)] (7) **"Professional archaeologist", a person who has a graduate degree in archaeology, anthropology, or closely related field, at least one year of full-time professional experience or equivalent specialized training in archaeological research, administration [of] or management, or at least four months of supervised field and analytic experience in general North American archaeology and demonstrated ability to carry archaeological research to completion, as evidenced by a master of arts or master of science thesis, or report equivalent in scope and quality;**

[(5)] (8) **"Second or subsequent violation", any violation, other than the first violation, of a criminal law related to the trafficking of human remains or cultural items located in the state of Missouri, the United States, or any other state;**

[(6)] (9) **"Skeletal analyst", a person possessing a postgraduate degree representing specialized training in skeletal biology, forensic osteology, or other relevant aspects of physical anthropology. The skeletal analyst shall have a minimum experience of one year in conducting laboratory reconstruction and analysis, and shall have demonstrated the ability to design and execute a skeletal analysis, and to present the written results and interpretations of such analysis in a thorough, scientific, and timely manner;**

[(7)] (10) **"Specific scientific investigations", refers to detailed studies of human remains by professional archaeologists, anthropologists, osteologists, or professionals in related disciplines;**

[(8)] (11) **"State historic preservation officer", the director of the department of natural resources;**

[(9)] (12) **"Unmarked human burial", any instance where human skeletal remains are discovered or believed to exist[, but] outside of a cemetery and for which there exists no written historical documentation or grave markers.**

194.403. 1. All human remains in unmarked human burial sites found after August 28, 2004, which are not the subject of a criminal investigation, together with any associated cultural items found after that date, shall immediately be placed under jurisdiction of the state historic preservation officer, at the site or after they have been removed. The state historic preservation officer shall have jurisdiction of the remains and associated cultural items, even if they are in the physical custody of another entity having professional archaeological staff with the written consent of the state historic preservation officer. All sacred objects or

objects of cultural patrimony found after August 28, 2004, must be placed into the jurisdiction of the state historic preservation officer, so that the department of natural resources can attempt to repatriate those to the appropriate Native American tribe or nation. However, nothing in sections 194.400 to 194.410 shall compel the state historic preservation officer to turn custody and control of human remains or cultural items over to any person, ethnic group or Native American tribe or nation that has not satisfactorily demonstrated its kinship or cultural affiliation with such remains or items.

2. State, and local museums, including any "museum" as defined in 25 U.S.C. section 3001, having legal custody and possession of human remains, funerary objects, sacred objects, or objects of cultural patrimony prior to August 28, 1987, are not required to turn those over to the state historic preservation officer, as long as they are in compliance with, or attempting to comply with, all other applicable state and federal laws.

3. The state historic preservation officer is authorized to promulgate appropriate regulations for the administration of sections 194.400 to 194.410. Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is created under the authority delegated in this section shall become effective only if it complies with and is subject to all of the provisions of chapter 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo, to review, to delay the effective date, or to disapprove and annul a rule are subsequently held unconstitutional, then the grant of rulemaking authority and any rule proposed or adopted after August 28, 2004, shall be invalid and void.

194.405. When an unmarked human burial or human skeletal remains are encountered during archaeological excavation, construction, or other ground disturbing activities, whether found on or in any private lands or waters or on or in any lands or waters owned by the state of Missouri or its political subdivisions, agencies or instrumentalities, the provisions of sections 194.400 to 194.410 shall apply **to the human remains and to all associated cultural items**.

194.406. 1. Any person knowing or with reason to know that an unmarked human burial or human skeletal remains **and any associated cultural items** are being disturbed, destroyed, defaced, mutilated, removed, or excavated, or exposed shall immediately notify either the state historic preservation officer or the local law enforcement officer with jurisdiction for the area in which the burial or remains are encountered.

2. When an unmarked human burial or human skeletal remains are encountered as a result of construction or agricultural earth disturbing activities or by a professional

archaeologist in the course of an investigation all such activities shall cease immediately within a radius of fifty feet of the point of discovery. Such activity shall not resume without specific authorization from either the state historic preservation officer or the local law enforcement officer, whichever party has jurisdiction over and responsibility for such remains. Said parties shall act promptly and make a decision within a reasonable time. Jurisdiction will be determined as follows:

(1) If upon investigation, the local law enforcement officer determines that the human skeletal remains may be involved in a [legal] **criminal** investigation, that officer will immediately assume all jurisdiction over and responsibility for such remains;

(2) If upon investigation, the local enforcement officer determines that the remains are not involved in a [legal] **criminal** investigation, the state historic preservation officer or his duly designated representative shall assume responsibility for such remains **and all associated cultural items**.

194.407. 1. In cases where an unmarked human burial or human skeletal remains are discovered as a result of construction or agricultural earth disturbing activities and where the state historic preservation officer has been determined to have jurisdiction, the state historic preservation officer shall determine whether removal of the human skeletal remains is necessary and appropriate for the purpose of scientific analysis. A general archaeological investigation of the site shall be conducted by a professional archaeologist and the professional archaeologist shall advise the state historic preservation officer of the physical location and the cultural and biological characteristics of the unmarked human burial or human skeletal remains **and all associated cultural items** within thirty days after the state historic preservation officer assumed jurisdiction over [the burial or remains] **them**.

2. In cases where an unmarked human burial or skeletal remains are discovered by a professional archaeologist in the course of an investigation, and where the state historic preservation officer has been determined to have jurisdiction, the professional archaeologist shall advise the state historic preservation officer of the physical location and the cultural and biological characteristics of the unmarked human burial or human skeletal remains **and all associated cultural items** within thirty days after the state historic officer assumed jurisdiction **over them**.

3. **The state historic preservation officer may, during the course of these investigations, call upon Native Americans, leaders of ethnic groups, or other appropriate persons to examine the burial site and associated cultural items, to the extent that may be appropriate.** Notwithstanding anything to the contrary herein contained no construction shall be suspended or delayed more than thirty days **unless the scope of work for the respectful and appropriate removal of the remains and all associated cultural items requires a longer period of time. If the state historic**

preservation officer determines that a longer period of time is necessary, the department shall notify in writing the lawful private or public property owner or easement holder and give a complete explanation of reasons for the delay. Such delay shall not exceed an additional thirty days, except with the consent of all affected persons, or as a court of competent jurisdiction may require.

194.408. Whenever an unmarked human burial or human skeletal remains are reported to the state historic preservation officer, **with or without associated cultural items**, the state historic preservation officer shall proceed as follows:

(1) Insofar as possible, the state historic preservation officer shall make reasonable efforts to identify and locate persons who can establish direct kinship with or descent from the individual whose remains constitute the burial. The state historic preservation officer, in consultation with the most closely related family member, shall determine the proper disposition of the remains **and all associated cultural items**;

(2) When no direct kin or descendants can be identified or located, but the burial or remains can be shown to have ethnic affinity with living peoples, the state historic preservation officer in consultation with the ~~[leaders]~~ **leader** of the ethnic groups having a relation to the burial or remains shall determine the proper disposition of the remains. But, if the state historic preservation officer determines the burial or remains are scientifically significant, no reinterment shall occur until the burial or remains have been examined by a skeletal analyst designated by the state historic preservation officer. In no event shall reinterment be delayed more than one year **unless that delay and its rationale have been reviewed and approved by the committee**;

(3) When the burial or remains cannot be related to any living peoples, the state historic preservation officer, in consultation with the unmarked human burial consultation committee, shall determine the proper disposition of the burial or remains. But, if the state historic preservation officer determines the burial or remains are scientifically significant, no reinterment shall occur until the burial or remains have been examined by a skeletal analyst designated by the state historic preservation officer. In no event shall reinterment be delayed more than one year unless ~~[otherwise and to the extent determined]~~ **that delay and its rationale have been reviewed and approved** by the committee;

(4) **When the burial site appears to be that of a Native American individual, the state historic preservation officer, in consultation with the appropriate state agency or museum and the unmarked human burial consultation committee, shall observe and comply fully with the pertinent provisions of the federal Native American Graves Protection and Repatriation Act, 25 U.S.C. sections 3001, et seq.;**

(5) Notwithstanding subdivisions (2) [and], (3), **and (4)** of this section the state historical preservation officer [may] **shall** seek approval from the unmarked human burial consultation committee to delay reinterment of the remains **for more than one year**, for

an additional scientific study **that has not already commenced, to be conducted** in a facility chosen by the state historic preservation officer. **The state historic preservation officer, on this or any other pending question or issue, may call a special meeting of the committee; or the state historic preservation officer may request a special public vote of the committee to decide the question.** If the **delay in reinterment for the new, additional scientific** study is approved by the committee, **then** reinterment shall be delayed for a period as specified by the committee;

(6) When the state historic preservation officer assumes jurisdiction and control over an unmarked human burial site and its associated cultural items, the lawful private or public property owner or easement holder shall have the right to continue the construction or other activities, after compliance with sections 194.406 and 194.407. However, if those activities will result in or necessitate the further alteration, disturbance, or removal of the human remains and any associated cultural items, without being able to respectfully rebury them in place on that site, then the state historic preservation officer shall make the necessary arrangements to remove those remains and cultural objects from that site and to take jurisdiction of them, and the lawful private or public property owner or easement holder shall be responsible for the resulting costs of their archaeological removal, cleaning, cataloging, preservation, documentation, and return to the state historic preservation officer for reburial or repatriation.

194.409. 1. There is hereby created in the department of natural resources, an "Unmarked Human Burial Consultation Committee", which shall be composed of seven members to be appointed by the governor with the advice and consent of the senate. The members of the committee shall be appointed as follows: the state historic preservation officer, two members who are archaeologists or skeletal analysts, two native Americans who are members of an Indian tribe recognized by the United States of America, one member who is a non-Indian minority, and one non-Indian, non-minority member who is neither a professional archaeologist nor a skeletal analyst. Members of the committee shall be residents of the state of Missouri.

2. The state historic preservation officer shall be chairman of the committee and shall serve a term which is contemporaneous with his employment as director of the department of natural resources. The terms of all other members of the committee shall be three years.

3. The committee shall meet at least [~~once~~] **twice** each calendar year, but may meet more often at the request of the state historic preservation officer.

4. The members of the committee shall serve voluntarily and shall not receive compensation for membership on the committee, except that they shall be eligible to receive reimbursement for transportation expenses as provided for through the budget approved for the office of the state historic preservation officer.

5. All actions and decisions of the state historic preservation officer and the unmarked human burial consultation committee shall be in conformity with the provisions of the federal National Historic Preservation Act of 1966, as amended; **with the federal Native American Graves Protection and Repatriation Act (NAGPRA), as amended, 25 U.S.C. 3001, et seq., if NAGPRA is applicable; and with any written agreement or memorandum of understanding entered into by a federal agency with the state historic preservation officer, or with a Native American tribe or nation, or both, according to federal law.**

194.410. 1. Any person, corporation, partnership, proprietorship, or organization who knowingly disturbs, destroys, vandalizes, or damages a marked or unmarked human burial site commits a class D felony.

2. Any person who knowingly appropriates for profit, uses for profit, sells, purchases or transports for sale or profit any human remains without the right of possession to those remains as provided in sections 194.400 to 194.410 commits a class A misdemeanor and, in the case of a second or subsequent violation, commits a class D felony.

3. Any person who knowingly appropriates for profit, uses for profit, sells, purchases or transports for sale or profit any cultural items obtained in violation of sections 194.400 to 194.410 commits a class A misdemeanor and, in the case of a second or subsequent violation, commits a class D felony.

4. **Any natural person who violates any provision of sections 194.400 to 194.410 shall be subject to a civil penalty of one thousand dollars per violation, plus the court costs, attorney fees, and other costs incurred by the state historic preservation officer or the department of natural resources in recovering the human remains or cultural items, and in properly cleaning, cataloging, preserving, and documenting them for reburial or repatriation. Where more than one natural person acts in combination, each shall be subject to the civil penalty and other specific costs. Any corporation, general or limited partnership, trust, limited liability company, or other legal entity that knowingly violates any provision of sections 194.400 to 194.410 shall be subject to a civil penalty of ten thousand dollars per violation, plus the court costs, attorney fees, and other costs incurred by the state historic preservation officer or the department of natural resources in recovering the human remains or cultural items, and in properly cleaning, cataloging, preserving, and documenting them for reburial or repatriation. A civil penalty imposed pursuant to this section shall be cumulative and in addition to other court costs, attorney fees, and other costs that may be imposed in the same action, in addition to any fines or imprisonment that may be imposed in a criminal action in any court of competent jurisdiction.**

5. The department may request either the attorney general or a prosecuting

attorney to bring any action authorized in this section in the name of the people of the state of Missouri. Suit may be brought in any county where the cause of action accrued or the county containing the seat of state government.

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